

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

United States Steel Corporation  
Plan for Employee Pension  
Benefits and United States Steel  
and Carnegie Pension Fund,

Plaintiffs,

v.

Michael C. Alford,

Defendant.

**ORDER**

Civil No. 09-1743 ADM/JSM

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Bruce J. Douglas, Esq. and Ashlee Bekish, Esq., Larkin Hoffman Daly & Lindgren Ltd., Minneapolis, MN; Rodney M. Torbic, Esq., United States Steel Corporation, Pittsburgh, Pennsylvania on behalf of Plaintiffs.

Denise Yegge Tataryn, Esq., and Emeric J. Dwyer, Esq., Mansfield, Tanick & Cohen, P.A., Minneapolis, MN on behalf of Defendant.

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On November 24, 2009, the undersigned United States District Judge heard oral argument on Defendant Michael C. Alford's ("Defendant") Motion to Dismiss [Docket No. 9]. Pursuant to section 502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(3), a Plan Administrator may recover "appropriate equitable relief" of an overpayment made to a beneficiary. Defendant contends that because the relief Plaintiffs seek in this matter is legal rather than equitable, recovery is barred. Plaintiffs counter that the terms of the Plan require Defendant to reimburse the Plan Administrator the full amount of any overpayment and that the Plan permits equitable relief to collect such overpayment.

For the reasons stated on the record at the conclusion of oral argument, and given the Defendant's high burden at this early stage of the proceedings, the Defendant's motion is denied. The Court anticipates that a scheduling/settlement conference with Magistrate Judge Janie S.

Mayeron will occur in the near future.

Based upon the foregoing, and all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss [Docket No. 9] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: November 25, 2009.